

STATE OF MICHIGAN
COURT OF APPEALS

ALICE LOUISE DOWNEY-FUZI,

Plaintiff-Appellee,

v

JESSE JOSEPH FUZI,

Defendant-Appellant.

UNPUBLISHED

September 27, 2002

No. 235122

Benzie Circuit Court

LC No. 99-005693-DO

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment of divorce, challenging the division of the marital assets. We affirm.

I

The parties married in 1995 and separated after four years of marriage. They had no children together. Defendant had four children from his prior marriage¹ who lived in the marital home at various times, including two minor daughters, who resided fulltime with the parties. At the time of the marriage, defendant owned a farm in Lake City, where the parties lived until moving to a newly built home in Benzie County.

Following a trial, the court granted a judgment of divorce, awarding defendant the marital home, which the parties built during their marriage on land owned by defendant. The court awarded plaintiff a share of the home's value, \$54,222, which the court calculated as one-half of the appraised value of the home without land, after a deduction of \$29,700 for defendant's premarital bank accounts and teaching income.

II

Defendant argues that the trial court's award was inequitable because the court erred in including defendant's separate property in the marital estate. We disagree.

¹ Defendant's former wife was deceased.

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002); *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the court. *McNamara, supra*; *Byington, supra*, 114-115.

To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's life status, each party's earning ability, each party's age, health and needs, past relations and conduct, and any other equitable circumstance. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992); *McNamara, supra* at 185. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Id.* at 185-186. Nevertheless, just as the final division may not be equal, the factors considered need not always be weighed equally. *Id.* at 186.

On appeal, we first review the trial court's findings of fact. *Sparks, supra* at 151. Findings of fact will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the "definite and firm conviction that a mistake has been committed." *Id.* Findings of fact are presumptively correct, and the burden is on the appellant to show clear error. *Id.* at 804.

If the trial court's findings are not clearly erroneous, we then decide whether the dispositional ruling was "fair and equitable" in light of the facts. *Sparks, supra* at 151-152; *McNamara, supra* at 185. This Court gives special deference to a trial court's findings when based on the credibility of the witnesses. *Draggool v Draggool*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

The court found that both parties contributed to the marital estate. The court found that plaintiff performed primary homemaker duties and cared for defendant's daughters, ages five and ten at the time the parties married. Plaintiff was employed as a nurse, earning approximately \$25,000 a year during the marriage, and she assisted in making improvements to the farmhouse which was sold and in building the new home. Based on our review of the record we conclude that the trial court's findings are not clearly erroneous.

In light of the court's findings, we conclude that the dispositional ruling concerning the real estate assets was fair and equitable and properly considered the value of defendant's separate assets at the time of the parties' marriage. *Reeves v Reeves*, 226 Mich App 490, 494-495; 575 NW2d 1 (1997). As the court noted, although this was not a long-term marriage, both parties were actively involved in improvements to the Lake City farm so that it could be sold, and both parties provided direct and indirect contributions to the building of the Benzie home. These partnership activities increased the net worth of the marital estate. The court recognized and allowed for defendant's separate property by awarding him \$29,700 value for his premarital financial assets as well as the value of the land for the Benzie home. *Id.* at 494, 496.

Further, the court properly recognized that the division of the real property value was necessary to ensure that plaintiff's share of the marital estate was sufficient for her suitable support and maintenance, given her medical condition, moderate income and earning capacity, and lack of other assets. *Id.* at 494.

III

Defendant next argues that the trial court erred in its calculation of defendant's premarital bank accounts. We disagree.

Given the testimony and evidence, the court's finding concerning the value of defendant's premarital assets was not clearly erroneous. During trial, defendant provided various estimates of his accounts at the time of the parties' marriage. The parties also provided the court with written closing arguments, which included figures concerning the parties' financial assets. The court's calculation is supported by the testimony and evidence.

Affirmed.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Richard A. Bandstra